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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

INDIGENOUS ENVIRONMENTAL NETWORK, <i>et al.</i> , and NORTHERN PLAINS RESOURCE COUNCIL, <i>et al.</i> , Plaintiffs, v.	CV 17-29-GF-BMM CV 17-31-GF-BMM Consolidated DEFENDANTS' RESPONSE TO NORTHERN PLAINS' PLAINTIFFS' RESPONSE TO DEFENDANTS' PROPOSED SCHEDULE FOR COMPLETING A SUPPLEMENTAL
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UNITED STATES DEPARTMENT OF STATE, <i>et al.</i> , ¹ Defendants, and TRANSCANADA CORPORATION, <i>et</i> <i>al.</i> , Defendant-Intervenors.	ENVIRONMENTAL IMPACT STATEMENT
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Defendants submit this brief response to address certain points made in Northern Plains Plaintiffs’ Response to Defendants’ Proposed Schedule for Completing a Supplemental EIS (“Pls. Resp.”) (ECF No. 212).

First, Plaintiffs claim that Defendants have offered an unrealistic schedule. Defendants disagree with this assessment and, as the entities charged with undertaking and completing the required statutory processes, Defendants are better positioned to determine the feasibility of the schedule. *See Vermont Yankee v. NRDC*, 435 U.S. 519, 544-545 (1978) (absent substantial justification, on remand the reviewing court is not to dictate “to the agency the methods, procedures, and time dimension of the needed inquiry” because to do otherwise, “clearly runs the risk of propelling the court into the domain which Congress has set aside

¹ Former Under Secretary of State Thomas A. Shannon, Jr., should be terminated as a party in these consolidated cases. Mr. Shannon has retired from the U.S. Department of State. Current Secretary of State Michael R. Pompeo should be substituted for Mr. Shannon pursuant to Fed. R. Civ. P. 25(d).

exclusively for the administrative agency”) (citation and internal quotation marks omitted). In any event, our schedule necessarily provides only estimates of the likely completion dates of a draft and final supplemental environmental impact statement (“SEIS”). For many of the reasons that Plaintiffs mention, the time necessary to complete an SEIS usually cannot be guaranteed. Certain tasks may take longer than expected, in which case the completion dates for the draft and final SEIS will be later than is laid out in the proposed schedule.

Second, despite Plaintiffs’ contrary suggestions, Defendants will follow all applicable regulatory procedures in preparing the SEIS, including public input on the draft SEIS. Consistent with this process, a Federal Register notice announcing the commencement of the SEIS process was published last week. *See* Notice of Intent, 83 Fed. Reg. 46,989 (Sept. 17, 2018). If at the end of the process, Plaintiffs nonetheless believe that the procedures followed have been inadequate, they will have the opportunity to bring such claims before the Court.

Third, Plaintiffs are concerned that the SEIS will not be completed in time to allow for Court review of the SEIS before TransCanada begins construction activities relating to the Keystone XL Pipeline. With this concern in mind, Defendants crafted a schedule for completion of the SEIS by the end of the year with decisions by the agencies to follow in January and early February 2019. Defendants do not believe that the SEIS can be completed more quickly, and

therefore any suggestion by Plaintiffs that the SEIS schedule should be more compressed to accommodate the Court's review should be rejected. Defendants are prepared to discuss a schedule for further proceedings with the parties and the Court at the September 25, 2018 status conference.

Respectfully submitted this 24th day of September, 2018,

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CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2018, a copy of the foregoing Defendants' Response to Northern Plains Plaintiffs' Response to Defendants' Proposed Schedule for Completing a Supplemental Environmental Impact Statement was served on all counsel of record via the Court's CM/ECF system.

/s/ Luther L. Hajek
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